Constitution and By-laws

of the

Ponca Tribe of Nebraska

25 U.S.C.
United States Code, 2011 Edition
Title 25 - INDIANS
CHAPTER 14 - MISCELLANEOUS
SUBCHAPTER XLVI-A - PONCA TRIBE OF NEBRASKA: RESTORATION OF RIGHTS AND PRIVILEGES
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SUBCHAPTER XLVI–A—PONCA TRIBE OF NEBRASKA: RESTORATION OF RIGHTS AND PRIVILEGES

§983. Definitions

For purposes of this subchapter—

(1) The term "Tribe" means the Ponca Tribe of Nebraska.

[illegible] the designated representative

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Ponca Tribe of Nebraska shall consist as follows:

(a) All persons listed and their lineal descendants of the tribal rolls of April 1, 1934, January 1, 1935, and June 18, 1965, as compiled by the Bureau of Indian Affairs.

(b) All persons entitled to be listed on the membership roll of June 18, 1965 who were not listed on the roll, notwithstanding the application or appeal deadline dates of P.L. 87-629.

(c) No individual is eligible for enrollment to membership if at the time they make application for membership in the Ponca Tribe of Nebraska they are currently enrolled with another federally recognized Tribe, Band or group unless an application for relinquishment is made with the other Tribe contingent upon enrollment with the Ponca Tribe of Nebraska.

(d) Any person not otherwise eligible for enrollment for membership in the Ponca Tribe of Nebraska shall be entitled to appeal a denial of membership by the Enrollment Committee to the Ponca Tribal Council and submit at such appeal clear and convincing evidence they possess some degree of Ponca Tribe of Nebraska blood. After hearing the appeal, membership shall be granted if the Ponca Tribal Council, by a two-thirds vote, approves the application of said person for enrollment into the membership of the Tribe. The decision of the Ponca Tribal Council shall constitute a final determination.

Section 2. The Ponca Tribal Council shall have the power to enact and promulgate resolutions and ordinances governing future enrollment of members and reinstatement of membership into the Ponca Tribe of Nebraska.

Section 3. The Ponca Tribal Council shall establish an honorary roster for persons adopted by the Tribe who do not meet the requirements for membership in the Ponca Tribe of Nebraska. Honorary members shall not have the right to vote, hold office, or otherwise exercise the rights or receive benefits of the members of the Ponca Tribe of Nebraska.

Section 4. Nothing contained in this article shall be construed to deprive any Tribal member of any vested right

Section 5. The Term "Ponca" shall be used hereinafter in replacement of the term "Indian" or "Native American".

Section 6. A Ponca member may relinquish his or her enrollment as a member of the Ponca Tribe of Nebraska by submitting a signed and acknowledged statement clearly requesting that his or her name be removed from the membership records of the Tribe.

Section 7. Enrollment by any person as a member of the Ponca Tribe of Nebraska shall not deprive that person of any rights, duties, privileges, immunities, and responsibilities that they shall hold as citizens of the United States of America.

Section 8. A roll of members of the Ponca Tribe of Nebraska shall be current and shall be kept by an Enrollment Committee. Once every year in the month of April, the Enrollment Committee shall conduct a census of the members of the Ponca Tribe of Nebraska and the roll of members shall be amended according to the findings of the census conducted. Subject to the right of privacy of the individual members the results of all census findings may be furnished to the Department of Interior and Indian Health Services.

ARTICLE III - BILL OF RIGHTS

Section 1. In order to protect its members the Ponca Tribe of Nebraska, its governing Council, or any of its agencies shall not:

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the offense, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment of over thirty (30) days, the right, upon request, to a trial by jury of fewer than six persons.

(11) Deny to any member of the Tribe any hunting, fishing, trapping, gathering, or any water rights as may be accorded to all members of the Tribe.

(12) Deny to any member their rights as a human being.

Section 2. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by an order of a Ponca Tribe of Nebraska Court.

ARTICLE IV - GOVERNING BODY

Section 1. A nine (9) member governing body, known as the **Ponca Tribal Council**, shall be elected by popular vote by district for staggered terms of four (4) years as specified by this Constitution and the duly enacted election ordinances. The Council shall consist of eight (8) members elected by District, two members from each District, and a Chairperson who is elected at large. The Ponca Tribal Council shall constitute the legislative branch of government for the Ponca Tribe of Nebraska.

Section 2. The Ponca Tribal Council shall elect from its membership a Vice Chair, Treasurer and Secretary. This group of officers along with the Chairperson shall be known as the Executive Committee. The Executive Committee shall constitute the Executive Branch of government for the Ponca Tribe of Nebraska.

Section 3. The Executive Committee, except for the Chairperson, shall be selected to their offices by a majority vote on a bi-annual basis by the members of the Ponca Tribal Council. Said election shall be made at the Ponca Tribal Council meeting held after the elections held on the first Tuesday of November of each election year. Any member of the Executive Committee shall be entitled to serve successive terms on the Executive Committee subject to the requirements of Article IV, Section 6 herein.

Section 4. The duly elected Chairperson shall be the Executive Officer of the Ponca Tribal Council and head of the Executive Committee.

Section 5. The Council districts hereby established shall be by equalization of population. Redistricting based upon changes in population distribution shall be done in accordance with duly adopted election ordinances. The initial districts are described as follows:

(a) District One (1): The area consisting of Boyd County, Nebraska, Knox County, Nebraska, Charles Mix County, South Dakota, Cedar, Dakota, Holt, Thurston, and Dixon Counties of Nebraska, and the States of Iowa, Indiana, South Dakota, Arizona, Wisconsin, Utah, and Maryland.

(b) District Two (2): Douglas County, Nebraska, Washington and Burt Counties of Nebraska, and the States of Washington, Georgia, Idaho, Louisiana, Maine, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and New York; and all provinces of Canada.

(c) District Three (3): Lancaster County, Nebraska, Sarpy, Hall and York counties of Nebraska, and the States of California, Illinois, Texas, Alaska, Arkansas, Colorado, Kansas, and Oklahoma.

(d) District Four (4): Madison County, Nebraska, Stanton, Platte, Nance, Dodge, Wayne, Nuckolls, Morrill and all other counties in the State of Nebraska not previously assigned to a District, and the States of Wyoming, Oregon, Florida, Missouri, Michigan, Montana, Nevada, Hawaii, and Minnesota

Section 6. No member of the Ponca Tribe of Nebraska may serve on the Ponca Tribal Council for more than two consecutive terms.

Section 7. The Chairperson shall be required to reside within 100 miles of the headquarters of the Tribe or within any service area of the Tribe as established by an act of Congress of the United States of America. The headquarters of the Tribe shall be located in Knox County, Nebraska. Any person elected as Chairperson who resides outside a 100 mile distance of the headquarters or does not reside within a service area shall have ninety (90) days from the date of his or her election to establish a residence as required herein. Failure to establish residence by the elected Chairperson shall constitute forfeiture of office and the next highest vote getter will automatically succeed to the position of Chairperson upon satisfaction of the above residency requirements.

Section 8. All Ponca Tribal Council members duly elected pursuant to the adopted election ordinances must, within ninety (90) days of their election, have or establish residency in their district as follows:

District 1: Within a 100 mile distance from the borders of Boyd County, Nebraska, Knox County, Nebraska, Charles Mix County, South Dakota.

District 2: Within a 100 mile distance from the border of Douglas County, Nebraska.

District 3: Within a 100 mile distance from the border of Lancaster County, Nebraska.

District 4: Within a 100 mile distance from the border of Madison County, Nebraska.

Failure by any duly elected Ponca Tribal Council member to have or establish a residence as set forth in this Section, shall constitute forfeiture of office and that person in said election who had the next highest vote total shall succeed to the office after he or she complies with the requirement of residency in the district as further defined in a election ordinance.

ARTICLE V - POWERS OF THE PONCA TRIBAL COUNCIL

Section 1. ENUMERATED POWERS. The **Ponca Tribal Council** shall exercise the following legislative powers, subject to all express restrictions upon such powers contained in this Constitution, the Constitution of the United States of America, Federal Law or any future Articles of Amendment.

(a) To negotiate and contract with the Federal, State and Local governments on behalf of the Tribe and to advise and consult with the representatives of the United States of America on all activities of the Federal Government that may affect the Ponca Tribe of Nebraska;

(b) To employ counsel for the protection and advancement of the rights of the Tribe and its members. Employment of counsel shall be subject to the approval of the Secretary of the Interior of the United States of America as long as such approval is required by Federal Law.

(c) To approve or veto any sale, disposition, lease, or encumbrance of Tribal lands, interests in other lands or other Tribal assets; or other trust lands or assets held by the United States of America under Federal Law by virtue of fiduciary duty which may be authorized or executed by the Secretary of the Interior of the United States of America or his designee with approval of the Ponca Tribal Council.

(d) To advise the Secretary of the Interior of the United States of America with regard to all appropriation estimates or Federal projects for the use and benefit of the Tribe in connecton with the submission of such estimates to the Office of Management and Budget and to the Congress of the United States of America.

(e) To make leases of Tribal land to members of the Ponca Tribe of Nebraska and to regulate the leases of land in conformity with Article XII of this Constitution.

(f) To establish an independent corporation to manage all economic affairs and enterprises of the Tribe which affairs shall be subject to the approval of the Secretary of Interior, so long as required by Federal Law in accordance with the terms of a corporate charter which may be issued to the Tribe by the Secretary of the Interior of the United States of America or by resolution of the Ponca Tribal Council.

(g) To appropriate for public and governmental purposes of the Ponca Tribe of Nebraska available funds within the exclusive control of the Tribe, and any other available public or private funds, grants, or any other funding source.

(h) To levy taxes upon persons under the jurisdiction of the Ponca Tribe of Nebraska as specified by ordinance or resolution.

(i) To purchase lands for public purposes, under condemnation proceedings if necessary in courts of competent jurisdiction and to regulate the inheritance of real and personal property within the territory of the Ponca Tribe of Nebraska.

(j) To safeguard and promote the peace, safety, morals, and general welfare of the Tribe by regulating the conduct of trade, and the use and disposition of property under the jurisdiction of the Ponca Tribe of Nebraska through ordinance, government law enforcement and judicial administration.

(k) To regulate the manner of qualification of candidates, and making nominations of candidates for the Ponca Tribe of Nebraska offices and of holding elections as specified by duly adopted election ordinances.

(l) To adopt resolutions and ordinances regulating the procedure of the Ponca Tribal Council itself and of other agencies, committees and officials of the Ponca Tribe of Nebraska.

(m) To encourage and foster the arts, crafts, heritage, traditions and culture of the Ponca Tribe of Nebraska.

(n) To charter subordinate organizations for economic purposes and to regulate the activities of such organizations.

(o) To protect and preserve the property, wildlife, and natural resources of the Tribe.

(p) To delegate to subordinate boards, committees, or officials, or to cooperative associations which are open to all members of the Tribe, any of the foregoing powers, reserving the right of the Ponca Tribal Council to review any actions taken by virtue of such delegated power.

Section 2. FUTURE POWERS. The Ponca Tribal Council may exercise such powers as may in the future be delegated to the Ponca Tribal Council by the members of the Ponca Tribe of Nebraska by amendments to this Constitution.

Section 3. RESERVED POWERS. Any rights and powers heretofore vested in the Ponca Tribe of Nebraska by their inherent aboriginal sovereignty, but not expressly referred to in this Constitution, shall not be abridged by this Article, but may be exercised by the people of the Ponca Tribe of Nebraska through the adoption of appropriate Constitutional amendments.

ARTICLE VI - JUDICIAL BRANCH OF GOVERNMENT

The Judicial power of the Ponca Tribe of Nebraska shall consist of a Chief Judge and Associate Judges as appointed by the Ponca Tribal Council pursuant to Section 4 of this Article.

Section 1. The Ponca Tribe of Nebraska retains the authority to adjudicate all proceedings with regard to children as it pertains to the Indian Child Welfare Act.

Section 2. Any Judge of the Court is hereby specifically authorized to review, in any case properly before them, the actions of members, of the Ponca Tribal Council, or any other officers, agents, or employees of the government of the Ponca Tribe of Nebraska to determine whether those actions are prohibited or are subject to punishment for violation of this Constitution, Constitution of the United States of America, or the laws or ordinances adopted by the Ponca Tribe of Nebraska. If any action complained of is outside the scope of authority delegated to the entity in question, or if a proper authority is being exercised in a prohibited manner, the court may enter injunction or other proper, legal, and equitable relief or declare the action unconstitutional and void as justice may require.

Section 3. The Chief Judge and the Associate Judges of the Ponca Tribe of Nebraska shall serve six (6) year terms beginning at the date of their appointment to office and until their successor shall be duly appointed. At the expiration of a term of office, the Chief Judge or Associate Judge shall, at his or her option, be considered by the Ponca Tribal Council to a new term of office.

Section 4. The Chief Judge and the Associate Judges shall be selected by the Ponca Tribal Council from nominees received from a Judicial Nominating Committee. The Judicial Nominating Committee shall consist of five (5) members appointed by the Ponca Tribal Council, with each District having at least one (1) representative on the Judicial Nominating Committee. No member of the Ponca Tribal Council may serve on the Judicial Nominating Committee. The Nominating Committee shall select from applicants those persons that they deem to be qualified to serve as Chief Judge or Associate Judges. All qualified applicants shall be certified to the Ponca Tribal Council by the Judicial Nominating Committee. The Ponca Tribal Council shall

conduct an open hearing of each nominated person and will then select from the candidates the Chief Judge or Judges of the Ponca Tribe of Nebraska. Any vacancies will be filled by following the same nominating and selection process.

Section 5. The Chief Judge and Associate Judges of the Ponca Tribe of Nebraska may be removed for cause from office as defined by the ordinance upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or conviction in any court of a felony or other crime involving moral turpitude. Removal for cause, as defined herein, shall be by petition, signed by at least twenty-five percent (25%) of the voters voting in the last tribal election. Said petition for removal shall be filed with the Ponca Tribal Council. Any Judge subject to removal by Petition shall be entitled to a hearing before the Ponca Tribal Council and the right of due process of law as provided in Article III herein. Hearing for removal of any Judge upon a petition for removal shall be conducted by the Ponca Tribal Council and a two-thirds affirmative vote of the full Tribal Council for removal shall be required in order to remove any Judge from office. The Chair shall be allowed to vote on any matter brought before the Council under this Article.

Section 6. The court system of the Ponca Tribe of Nebraska shall be courts of general jurisdiction and shall further have jurisdiction in all cases arising under the Constitution, laws, ordinances and Treaties of the Ponca Tribe of Nebraska.

Section 7. Upon creation of the Judicial System, the Ponca Tribal Council shall appropriate adequate funds to operate the Judicial Branch of government. No decrease in compensation may be made to any Judge by the Ponca Tribal Council during a Judge's term of office.

ARTICLE VII - ELECTIONS

Section 1. Except for the first election called by and held by the Secretary of the Interior of the United States of America pursuant to Public Law 101-484, Section 8 (b); all other Tribal elections shall be held on the first Tuesday in the month of November of even numbered years in accordance with the rules and regulations provided in this Constitution and pursuant to duly adopted election ordinances of the Ponca Tribal Council. In the first election held under this Constitution the Chairman shall be elected to a four year term. In the first election two members to the Ponca Tribal Council shall be elected from each District with the candidate receiving the greatest number of votes in each District being elected to a four year term and the second place candidate being elected to a two year term. Thereafter in all elections, candidates elected to the Council shall be elected to four year terms, to thereby establish staggered terms of office.

Section 2. All recognized members of the Ponca Tribe of Nebraska eighteen (18) years of age and over shall be eligible to register to vote in any Tribal Election. In order to vote in any election you must be a registered voter. The Process of Members Right to Vote and Manner of Registration to Vote shall be included in the election ordinance to be duly adopted by the Ponca Tribal Council.

Section 3. Any person elected to the Ponca Tribal Council shall be not less than twenty-five (25) years of age; if a convicted felon, shall have been pardoned and all civil rights restored prior to an election; any elected person must be an enrolled member of the Ponca Tribe of Nebraska. Any person that has been convicted in any court of any jurisdiction of a crime involving the theft of Ponca Tribal funds or property shall not be eligible for election to the Ponca Tribal Council or any Ponca Tribal Office irrespective of any pardon or restoration of civil rights for said offense involving Ponca Tribal funds or property.

Section 4. The election ordinance shall include, but not be limited to, provisions for an election board consisting of an officer in charge acting as Chairperson, and at least two (2) representatives from the general members of the Ponca Tribe of Nebraska. It shall be the duty of the election board to supervise all elections, verify petitions by members, and perform such other duties in compliance with the ordinances adopted by the Ponca Tribal Council and this Constitution. The election board shall be empowered to appoint District Election Boards for each District to assist it in executing the duties of conducting elections. No Ponca Tribal Council member or any candidate for office or any member of their immediate family shall serve on the Election Board in any capacity.

Section 5. In order to appear on an election ballot, candidates for Chairperson must file a petition signed by 50 enrolled tribal members who are eligible to vote. Candidates for district council members must file a petition signed by 25 enrolled tribal members who are eligible to vote for the candidate from that district.

ARTICLE VIII - VACANCIES AND REMOVAL/RECALL FROM OFFICE

Section 1. If a council member or officer shall die, resign, be removed or recalled from office, fail to attend three (3) consecutive Council meetings without just cause, or shall have a final finding of guilt by either the Tribe's Court or a State Court or a Federal Court of a felony or misdemeanor involving dishonesty, moral turpitude, or of accepting a bribe; the Ponca Tribal Council members shall have power to declare the position vacant by a two-thirds vote of the full Council and shall appoint by majority vote of the full Council the replacement who shall be from the District that has a vacancy. Any appointee shall serve the balance of the unexpired term.

Section 2. Any elected or appointed person is subject to recall from office upon petition of at least thirty (30%) percent of the voters eligible to vote for that person in the last election. The Secretary of the Ponca Tribal Council Executive Committee shall receive and determine within (45) forty-five days of submission the validity of all recall petitions. If the Secretary for the Council fails to issue a written determination on the validity of a recall petition within (45) forty-five days of its submission, the recall petition shall be deemed automatically to be valid and recall balloting shall be conducted. A person shall be recalled if he or she fails to receive a majority of ballots to retain him or her in office on any recall vote. The Ponca Tribal Council as part of its duties shall prepare a recall ordinance.

ARTICLE IX - INITIATIVE AND REFERENDUM

Section 1. The exercise of enumerated powers vested in the Ponca Tribal Council shall be subject to a referendum vote of the people upon a written petition signed by not less than forty-five (45%) percent of the total number of voters eligible to vote in the last election, provided further that not less than thirty (30%) percent of the eligible voters shall vote in any such referendum balloting. Majority vote shall prevail on any referendum issue. Any referendum petition must be filed with the Chairperson of the Ponca Tribal Council or the acting Chairperson as the case may be.

Section 2. Any matter of concern to the Tribe not previously considered or acted upon by the Ponca Tribal Council may be presented for ballot vote upon a written Petition by the members of the Ponca Tribe of Nebraska. Said petition must be signed by not less than 45% of the total number of voters eligible to vote in the last election. Provided further that not less than 30% of the eligible voters shall vote in any such initiative balloting. Majority vote shall prevail on any initiative issue. The Petition must be filed with the Chairperson of the Ponca Tribal Council, or the Acting Chairperson as the case may be.

ARTICLE X - POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE

Section 1. The Executive Committee shall consist of the Chairperson, Vice Chair, Secretary, Treasurer as provided in Article IV.

Section 2. The Executive Committee shall hold regular monthly meetings at a time and place to be determined by the Chair. The Chair shall send out notices to the other members of the Executive Committee advising of the time and place of such meeting. The regular monthly Executive Committee meeting shall occur prior to the 10th day of every month. Three members of the Executive Committee in attendance at any meeting shall constitute a quorum to conduct business. A majority vote of the Executive Committee shall be required to approve any action of the Executive Committee and the Chairperson shall be entitled to vote on all issues brought before the Executive Committee.

Section 3. The Chair is delegated with the responsibility and shall be empowered to act on behalf of the Ponca Tribal Council and the Tribe in accordance with the Constitution, resolutions, laws and ordinances of the Ponca Tribe of Nebraska. All actions taken by the Chair shall be presented before the next regular meeting of the Ponca Tribal Council for ratification. Any acts not so ratified shall be immediately rescinded by the Chair and all actions necessary to rescind said act shall be taken.

Section 4. The Chair shall preside at all meetings of the Ponca Tribal Council and Executive Committee. The Chair shall conduct the meetings of the Ponca Tribal Council and Executive Committee in accordance with the Constitution of the Ponca Tribe of Nebraska and resolutions enacted by the Ponca Tribal Council. In the event there shall be a conflict of authority

the Constitution of the Ponca Tribe of Nebraska shall prevail and take precedence over all other rules and resolutions. The Chair, or a member of the Executive Committee, in presiding over the Ponca Tribal Council, shall not be entitled to vote except in the event of a tie and then the Chair's vote shall be the deciding vote. The Chair shall be under bond with a Surety Company of recognized standing in an amount to be determined by the Ponca Tribal Council.

Section 5. The Vice-Chair shall preside at all meetings of the Ponca Tribal Council in the absence of the Chair and shall act in his/her stead in all matters pertaining to the office of the Chair. The Vice-Chair shall be under bond with a Surety Company of recognized standing in an amount to be determined by the Ponca Tribal Council.

Section 6. The Secretary shall keep an accurate record of all proceedings of the Ponca Tribal Council; shall attend to the keeping of the official records of the Ponca Tribal Council and shall be responsible for the prompt and efficient handling of all correspondence pertaining to the business of the Ponca Tribal Council and the Tribe; keep all official records open to inspection by the members of the Tribe at all times as provided by ordinance to be adopted by the Ponca Tribal Council. The Secretary shall receive and determine the validity of all referendum and recall petitions. Clerical staff shall be provided to the Secretary by the Ponca Tribal Council to assist in keeping and maintaining the records of all proceedings. The Secretary shall be under bond with a Surety Company of recognized standing in an amount to be determined by the Ponca Tribal Council.

Section 7. The Treasurer shall be the custodian of all funds in possession of the Tribe from any source; shall be under bond with a Surety Company of recognized standing in an amount to be determined by the Ponca Tribal Council, shall keep an accurate record of all such funds and shall disburse the same in accordance with the vote of the Ponca Tribal Council and as designated by this Constitution; shall keep the books containing the financial status of the Tribe open to audit and examination by the Secretary of Interior of the United States of America or his designee at all times. All financial records shall be open to inspection by members of the Tribe as provided by ordinance to be adopted by the Ponca Tribal Council. Clerical staff shall be provided to the Treasurer by the Ponca Tribal Council to assist in the accurate keeping of financial records of the Tribe.

Section 8. The presiding chairs of all committees created by the Chair shall report directly to the Ponca Tribal Council unless otherwise provided in the creation of said committee.

ARTICLE XI - MEETINGS

Section 1. General Membership meetings or Ponca Tribal Council meetings of the Tribe may be held as noticed at least ten (10) days in advance by the Chairperson of the Ponca Tribal Council. Executive Committee meetings shall be held monthly as provided in Article X, Section 2 upon three days notice to be given by the Chair. Special Meetings of the Council or General members may be held at the discretion of the Chairperson or upon request of five (5)

members of the Ponca Tribal Council or upon the presentation of a petition to the Chairperson of the Ponca Tribal Council signed by at least ten (10%) percent of the members from each District eligible to vote. Except for General Members meetings, three (3) days written notice for Special Ponca Tribal Council meetings shall be given to all Ponca Tribal Council members. Members and Council Members may participate in meetings or conduct meetings through the use of any means of communications by which all persons participating in the meeting can simultaneously hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

Section 2. Five members of the Ponca Tribal Council shall constitute a quorum to transact business at any meeting. Each member of the Ponca Tribal Council shall sign his name in his/her own handwriting signifying their presence at each meeting or shall verbally request the Secretary of the meeting to show their presence if they are participating by means of telecommunications. The Chair shall be counted as a member when determining a quorum to transact business at any time.

Section 3. All Ponca Tribal Council Meetings and General Members Meetings shall be conducted pursuant to this Constitution and Resolutions approved and adopted by the Ponca Tribal Council.

Section 4. The meetings of the Ponca Tribal Council shall be public to the Ponca Tribal members. The meetings shall adhere to an agenda set in advance. In appropriate instances the Ponca Tribal Council may by motion and majority vote conduct executive sessions outside of public hearing. General and Special Council Meetings and General Members meetings shall be held at the Tribe's Headquarters or at such other specified location to be designated in the call or notice.

ARTICLE XII - LAND

Section 1. All lands, including heirship lands, within the jurisdiction of the Ponca Tribe of Nebraska shall continue to be held as before by their present owners. No right of condemnation of lands owned by the Ponca Tribe of Nebraska is granted to any other governmental agency without the express approval of the Ponca Tribal Council. It is further recognized that under existing law individually owned lands may be inherited by the heirs of the present owner, whether or not they are members of the Ponca Tribe of Nebraska. The right of the individual Ponca People to hold his or her land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior of the United States of America, voluntarily convey his or her land to the Ponca Tribe of Nebraska either in exchange for a money payment or in exchange for a lease covering the same land or other land, as hereinafter provided.

Section 2. Lands of the Ponca Tribe of Nebraska and all lands which may hereafter be acquired by the Ponca Tribe of Nebraska or by the United States of America in trust for the Ponca Tribe of Nebraska shall be held as Tribal lands, and no part of such lands shall be mortgaged, exchanged, or sold, except as authorized by Federal Law.

Section 3. Tribal lands as are not required for school or other administrative use may be leased by the Ponca Tribe of Nebraska to members of the Ponca Tribe of Nebraska, or may be leased or otherwise used by the Ponca Tribe of Nebraska as hereinafter provided for.

Section 4. Lands may be leased by the Ponca Tribal Council with the approval of the Secretary of the Interior of the United States of America if required by Federal Law. Preference in granting leases shall be given, first, to Ponca Tribal cooperative associations, and secondly, to individual members of the Ponca Tribe of Nebraska. No lease of Tribal lands to a nonmember shall be made by the Ponca Tribal Council unless it shall appear that no Ponca Tribal cooperative association or individual member of the Tribe is able and willing to use the land and to pay a reasonable fee for such use.

Section 5. No member of the Ponca Tribe of Nebraska may use or occupy Tribal lands except under an approved lease entered into by the Ponca Tribal Council.

Section 6. Unleased land shall be managed by the Ponca Tribal Council for the benefit of the members of the entire Tribe. Management of unleased tribal land will be in conformity with the rules and regulations prescribed by the Secretary of the Interior of the United States of America, if required by Federal Law.

Section 7. Tribal funds may be used to acquire land for the Ponca Tribe of Nebraska for the benefit of its members.

ARTICLE XIII - TRIBAL IMMUNITY

Section 1. The Tribe shall be immune from suit in any civil actions, the Ponca Tribal Council, Tribal officers, and employees shall be immune from suit for any civil liability arising from the performance of their official duties.

Section 2. In any action otherwise authorized by this Constitution by or against the Tribe or its officers or employees arising from the performance of their official duties, the following rules and procedures shall apply:

(a) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

(b) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post a security bond for any purpose.

Section 3. The following limitations on the bringing of civil actions will apply:

(a) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.

(b) Any action against the Tribe or its officers derivative of lease of Tribal land must be commenced within six (6) years of the date the cause of action accrued.

(c) Any action against the Tribe or its officers alleging intentional torts shall be commenced within one (1) year of the date the cause of action accrued.

(d) Any other action against the Tribe or officers must be commenced within two (2) years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or mistake.

ARTICLE XIV - SAVINGS - SEVERABILITY

All previous resolutions, legislation, laws and acts taken by The Interim Council on behalf of the Ponca Tribe of Nebraska that are consistent with the limitations, powers, duties and obligations of this Constitution are ratified and shall remain as valid acts of the Ponca Tribe of Nebraska.

In the event a Court of competent jurisdiction should hold an Article or any part of this Constitution as invalid the remainder of the Constitution shall be in full force and effect. It is the intention for each portion of this Constitution to be severable from any invalid portion of the Constitution.

ARTICLE XV - AMENDMENT

Section 1. It shall be the duty of the Secretary of Interior to call an election by the members on a proposed constitutional amendment upon receipt of a written resolution of the Ponca Tribal Council signed by at least six (6) members of the Ponca Tribal Council. This Constitution shall be amended if a majority vote of the qualified voters of the Ponca Tribe of Nebraska voting at an election called for the purpose by the Secretary of the Interior of the United States of America or his designee approve said amendment, provided that at least thirty (30%) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall

have been approved by the Secretary of the Interior of the United States of America or his designee, if required by Federal law.

Section 2. It shall also be the duty of the Secretary of the Interior of the United States of America or his designee to call an election by the members on any proposed amendment to the Constitution upon receipt of a petition signed by forty (40%) percent of the persons 18 years or older who are members of the Tribe. Said amendment shall become effective if voted on and approved as provided in Article XV, Section 1 herein.

ARTICLE XVI - ADOPTION OF CONSTITUTION

This Constitution, when adopted by a majority of the qualified voters of the Ponca Tribe of Nebraska, voting at a special election called for this purpose by the Secretary of the Interior of the United States of America, provided that at least thirty (30%) percent of those entitled to vote shall vote in such election, shall be submitted to the Secretary of the Interior of the United States of America, and if approved it shall be effective from the date of execution of approval of this Constitution by the Secretary of the Interior or his designee.

This Constitution shall, upon its adoption by the members of the Ponca Tribe of Nebraska, and validation of its adoption by the Secretary of the Interior of the United States of America shall supersede any and all prior Constitutions and amendments thereto of the Ponca Tribe of Nebraska.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on APRIL 19, 1994, the foregoing Constitution of the Ponca Tribe of Nebraska was submitted to the registered voters of the Ponca Tribe of Nebraska and was on JUNE 24, 1994 duly adopted/rejected by a vote of 227 for, and 8 against, and 0 cast ballots found spoiled or multilated in an election in which at least thirty-percent (30%) of the 319 members entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended.

Chairman, Election Board

Deborah Wright
Election Board Member

Duane Bouge
Election Board Member

Date: JUNE 28, 1994

CERTIFICATE OF APPROVAL

I, _____, Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Ponca Tribe of Nebraska. This Constitution is effective as of this date; PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.

Patrick A. Hayes

Acting Deputy Commissioner of Indian Affairs

Washington, D. C.

Date: JUL 2 2 1994

25 U.S.C.
United States Code, 2011 Edition
Title 25 - INDIANS
CHAPTER 14 - MISCELLANEOUS
SUBCHAPTER XLVI-A - PONCA TRIBE OF NEBRASKA: RESTORATION OF RIGHTS AND PRIVILEGES
From the U.S. Government Printing Office, www.gpo.gov

SUBCHAPTER XLVI–A—PONCA TRIBE OF NEBRASKA: RESTORATION OF RIGHTS AND PRIVILEGES

§983. Definitions

For purposes of this subchapter—

(1) The term "Tribe" means the Ponca Tribe of Nebraska.

(2) The term "Secretary" means the Secretary of the Interior or the designated representative of the Secretary of the Interior.

(3) The term "Interim Council" means the Board of Directors of the Northern Ponca Restoration Committee, Inc.

(4) The term "member" means a person who is enrolled on the membership roll of the Tribe of June 10, 1965, that was compiled by the Bureau of Indian Affairs or is entitled to be enrolled as a member of the Tribe under section 983e of this title.

(5) The term "State" means the State of Nebraska.

(Pub. L. 101–484, §2, Oct. 31, 1990, 104 Stat. 1167.)

SHORT TITLE

Section 1 of Pub. L. 101–484 provided that: "This Act [enacting this subchapter] may be cited as the 'Ponca Restoration Act'."

§983a. Federal recognition

Federal recognition is hereby extended to the Ponca Tribe of Nebraska. All Federal laws of general application to Indians and Indian tribes (including the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), popularly known as the Indian Reorganization Act) shall apply with respect to the Tribe and to the members.

(Pub. L. 101–484, §3, Oct. 31, 1990, 104 Stat. 1167.)

REFERENCES IN TEXT

Act of June 18, 1934, referred to in text, popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§983b. Restoration of rights

(a) Rights abrogated or diminished

All rights and privileges of the Tribe which may have been abrogated or diminished before October 31, 1990, by reason of any provision of Public Law 87–629 [25 U.S.C. 971 et seq.] are hereby restored and such law shall no longer apply with respect to the Tribe or the members.

(b) Rights existing prior to restoration

Nothing in this subchapter may be construed to diminish any rights or privileges of the Tribe, or of the members, that exist prior to October 31, 1990.

(c) Acceptance by Secretary of real property transferred for benefit of Tribe; exemption from taxation

The Secretary shall accept not more than 1,500 acres of any real property located in Knox or Boyd Counties, Nebraska, that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary (subject to any rights, liens, or taxes that exist prior to the date of such transfer) in the name of the United States in trust for the benefit of the Tribe and shall be exempt from all taxes imposed by the Federal Government or any State or local government after such transfer. The Secretary may accept any additional acreage in Knox or Boyd Counties pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(d) Effect on existing rights and obligations

Except as otherwise specifically provided in any other provision of this subchapter, nothing in this subchapter may be construed as altering or affecting—

(1) any rights or obligations with respect to property,
(2) any rights or obligations under any contract,
(3) any hunting, fishing, trapping, gathering, or water rights of the Tribe or the members, or
(4) any obligation to pay a tax levied before October 31, 1990.

(e) Reservation status

Reservation status shall not be granted any land acquired by or for the Tribe.

(Pub. L. 101–484, §4, Oct. 31, 1990, 104 Stat. 1167.)

REFERENCES IN TEXT

Public Law 87–629, referred to in subsec. (a), is Pub. L. 87–629, Sept. 5, 1962, 76 Stat. 429, which is classified generally to subchapter XLVI (§971 et seq.) of this chapter. For complete classification of this Act to the Code, see Tables.

Act of June 18, 1934, referred to in subsec. (c), popularly known as the Indian Reorganization Act, is classified generally to subchapter V (§461 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

§983c. Services

Notwithstanding any other provision of law, the Tribe and its members shall be eligible, on or after October 31, 1990, for all Federal services and benefits furnished to federally recognized tribes without regard to the existence of a reservation for the Tribe. In the case of Federal services available to members of federally recognized tribes residing on or near a reservation, members of the Tribe residing in Sarpy, Burt, Platte, Stanton, Holt, Hall, Wayne, Knox, Boyd, Madison, Douglas, or Lancaster Counties of Nebraska, Woodbury or Pottawattomie Counties of Iowa, or Charles Mix County of South Dakota shall be deemed to be residing on or near a reservation.

(Pub. L. 101–484, §5, Oct. 31, 1990, 104 Stat. 1168; Pub. L. 104–109, §12, Feb. 12, 1996, 110 Stat. 765.)

AMENDMENTS

1996—Pub. L. 104–109 inserted "Sarpy, Burt, Platte, Stanton, Holt, Hall, Wayne," before "Knox" and substituted ", Woodbury or Pottawattomie Counties of Iowa, or Charles Mix County" for "or Charles Mix County".

§983d. Interim government

Until such time as a constitution for the Tribe is adopted in accordance with section 983f(a) of this title and tribal officials are elected under section 983f(b) of this title, the Tribe shall be governed by the Interim Council.

(Pub. L. 101–484, §6, Oct. 31, 1990, 104 Stat. 1168.)

§983e. Membership roll

(a) Accuracy pending adoption of tribal constitution

Until a tribal constitution is adopted in accordance with section 983f of this title, the Interim Council shall take such measures as will insure the continuing accuracy of the membership roll of the Tribe.

(b) Eligibility pending adoption of tribal constitution; appeal of exclusion

(1) Until a tribal constitution is adopted in accordance with section 983f of this title, an individual shall be eligible for membership in the Tribe, and the name of the individual shall be placed on the membership roll of the Tribe, if—

(A) the individual is living and is not an enrolled member of another Indian tribe that is recognized by the Federal Government, and

(B) the individual—

(i) was listed on the tribal membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs,

(ii) notwithstanding the application or appeal deadline dates, was entitled to be listed on the membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs, but was not listed, or

(iii) is a lineal descendant of an individual, living or deceased, who is described in clause (i) or (ii).

(2) Any individual who is excluded from the membership roll of the Tribe by the Interim Council may appeal to the Secretary for a determination of the eligibility of the individual for membership in the Tribe. Such determination by the Secretary shall be final. The Interim Council shall include on the membership roll any such individual that the Secretary determines in such an appeal to be eligible for membership in the Tribe.

(c) Constitution as governing

After adoption of a tribal constitution in accordance with section 983f of this title, the constitution of the Tribe shall govern membership in the Tribe.

(Pub. L. 101–484, §7, Oct. 31, 1990, 104 Stat. 1168.)

§983f. Tribal constitution

(a) Adoption by secret ballot; absentee balloting

Upon the completion of the tribal membership roll and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election to adopt a constitution for the Tribe. Such constitution shall be submitted by the Interim Council to the Secretary no later than 1 year following October 31, 1990. Absentee balloting shall be permitted regardless of voter residence. In every other regard, the election shall be held according to section 476 of this title.

(b) Election of tribal officials

Not later than 120 days after the Tribe adopts a tribal constitution, the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in the constitution. Said election shall be conducted according to the procedures stated in subsection (a) of this section except to the extent that said procedures conflict with the tribal constitution.

(c) Governing body treated as Indian tribal government for purposes of taxation

Notwithstanding any other provision of law, the governing body of the Tribe established under the constitution of the Tribe that is adopted under subsection (a) of this section shall be treated as an Indian tribal government for purposes of title 26.

(Pub. L. 101–484, §8, Oct. 31, 1990, 104 Stat. 1169.)

§983g. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 101–484, §9, Oct. 31, 1990, 104 Stat. 1169.)

§983h. Economic development plan

(a) Establishment; submittal to Congress

The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe to establish a plan for economic development for the Tribe;

(2) in accordance with this section, establish such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe (and after consultation with the State and local officials pursuant to subsection (b) of this section), shall [1] submit such plan to the Congress by no later than the date that is 3 years after October 31, 1990.

(b) Consultation with State and local officials

(1) To ensure that legitimate State and local interests are not prejudiced by the economic development plan established under subsection (a) of this section, the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State with respect to the proposed economic development plan. The Secretary shall provide complete information on the proposed economic development plan to such officials, including the restrictions imposed on such plan by subsection (c) of this section.

(2) During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess and shall request comments and additional information on the extent of any State or local service to the Tribe.

(c) Required provisions

Any economic development plan established by the Secretary under subsection (a) of this section shall provide that—

(1) real property acquired by or for the Tribe located in Knox or Boyd Counties, Nebraska, shall be taken by the Secretary in the name of the United States in trust for the benefit of the Tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land held by any person at the time of acquisition

of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Nebraska pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) Statement regarding individuals consulted, and testimony or comments received by Secretary

The Secretary shall append to the economic development plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) naming each individual consulted in accordance with subsection (b) of this section;

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any individual named in paragraph (1).

(Pub. L. 101–484, §10, Oct. 31, 1990, 104 Stat. 1169; Pub. L. 102–497, §2, Oct. 24, 1992, 106 Stat. 3255.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–497 substituted "3 years" for "2 years".

[1] *So in original. The word "shall" probably should not appear.*